



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA-2022-0028]

RIN 2126-AC53

Clarification to the Applicability of Emergency Exemptions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA is proposing to narrow the scope of regulations from which relief is provided automatically for motor carriers providing direct assistance when an emergency has been declared. Through the proposed changes, the Agency would ensure that the relief granted through emergency declarations is appropriate and tailored to the specifics of the circumstances and emergency being addressed. The Agency also proposes revisions to the process for extending an automatic emergency exemption where circumstances warrant.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2022-0028 using any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket/FMCSA-2022-0028>. Follow the online instructions for submitting comments.
- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Sinniger, Regulatory Law Division, Office of the Chief Counsel, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 570-8062, Kathryn.Sinniger@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA-2022-0028), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2022-0028>, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of

your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington DC 20590-0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2022-0028> and choose the document to review. To view comments, click this NPRM, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy

DOT solicits comments from the public to better inform its regulatory process, in accordance with 5 U.S.C. 553(c). DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL 14 – Federal Docket Management System), which can be reviewed at <https://www.govinfo.gov/content/pkg/FR-2008-01-17/pdf/E8-785.pdf>.

D. Comments on the Information Collection

Written comments and recommendations for the information collection discussed in this NPRM should be sent within 60 days of publication to the docket for this rulemaking, as indicated above in paragraph A. “Submitting Comments.”

II. Executive Summary

A. Purpose and Summary of the Regulatory Action

Section 390.23 of title 49, Code of Federal Regulations (CFR), automatically creates a 30-day exemption from 49 CFR parts 390 through 399 when the President, a Governor, or FMCSA issues a declaration of an *emergency*, as defined in §§ 390.5 and 390.5T, and a motor carrier or driver provides *direct assistance* to supplement State and local *emergency relief* efforts in response to that emergency, as those terms are defined in §§ 390.5 and 390.5T.¹

Based on Agency subject matter expertise and input from States, affected localities, industry groups and others, FMCSA believes that most emergencies justify allowing carriers and drivers providing direct assistance in responding to the emergency relief from the normal hours of service (HOS) limits to deliver critical supplies and services to the communities in need. However, other safety regulations, including the driver qualification requirements of part 391, the vehicle inspection and other operating requirements such as prohibitions on operating while ill or fatigued in part 392, or the parts and accessories required by part 393 often have no direct bearing on the motor carrier’s ability to provide assistance to the emergency relief efforts.

Safety regulations ensure that companies, vehicles, and drivers meet the minimum requirements to operate safely. While the temporary relief from some regulations may be necessary during an emergency, waiving every regulation in parts 390-399 could negatively impact the safety of commercial motor vehicles (CMVs) operating on the

¹ Section 390.5 of title 49 is currently suspended and replaced by 49 CFR 390.5T, however the definitions for the listed terms are identical in both sections.

roadways. However, the Agency has no information that suggests that past or existing emergency exemptions have in fact negatively impacted road safety.²

In order to provide clarity on which emergency exemptions are necessary during an emergency, FMCSA proposes to narrow the automatic applicability of § 390.23 to the HOS limits in §§ 395.3 and 395.5. This change would clarify that carriers and drivers are not authorized to overlook other important safety requirements while performing direct assistance to emergency relief efforts. By limiting the scope of the current rule on emergency regulatory relief, the NPRM would clarify that the Federal Motor Carrier Safety Regulations (FMCSRs) not relevant to most emergency situations remain in effect while retaining the Agency's flexibility to tailor emergency regulatory relief to the specific circumstances of an emergency.

B. Summary of Major Provisions

This NPRM proposes changes to the definitions in §§ 390.5 and 390.5T. It would modify the definition for *emergency* to clarify that emergency regulatory relief under § 390.23 generally does not apply to economic conditions that are caused by market forces, including shortages of raw materials or supplies, labor strikes, driver shortages, inflation, or fluctuations in freight shipment or brokerage rates, unless such conditions or events cause an immediate threat to human life and result in a declaration of an emergency. The NPRM would also remove the definition for *emergency relief* as that term would no longer be used in § 390.23 and would amend the definition of *direct assistance* to incorporate the essential components of the former *emergency relief* definition. It would also move the definition for *residential heating fuel* from the text of § 390.23 and place it in the definition sections, §§ 390.5T and 390.5. These

² The Agency recently requested comment on the extent to which motor carriers are continuing to rely on the COVID-19 emergency declaration to deliver certain commodities and whether there has been any impact on safety. (Sept. 7, 2022, 87 FR 54630) While some commenters noted an overall increase in truck crash fatalities, there were no comments linking those fatalities to the emergency exemption.

reorganizational changes would simplify the regulatory text in § 390.23, without changing the regulation's meaning.

This NPRM would revise § 390.23 in several ways. While Presidential declarations of emergency would continue to trigger a 30-day exemption from all FMCSRs in parts 390 through 399, the proposed rule would limit the duration and scope of the existing automatic regulatory relief that takes effect upon a regional declaration of an emergency by a Governor, a Governor's authorized representative, or FMCSA. The automatic regulatory relief would apply for only 5 days, as opposed to 30 days, and would exempt CMV drivers only from the HOS regulations in §§ 395.3 and 395.5, as opposed to all regulations in parts 390 through 399. This change would both shorten the time the automatic regulatory relief is in place as well as limit the scope of relief provided, ensuring that any impact on safety continues to be minimized during the period of the automatic regulatory relief. FMCSA determined that the period of 5 days for automatic relief was appropriate for regional declarations of emergency, as its experience in monitoring emergency declarations demonstrated that in most cases, the actual emergency (e.g., the specific weather event or highway accident) is over within 5 days. Any emergency relief efforts extending beyond that time are typically geared to rebuilding and not to the emergency response scenarios envisioned when this rule was first issued.

Section 390.23 would maintain the statutory requirement from the Reliable Home Heating Act (49 U.S.C. 31136 note) that when a Governor declares a state of emergency due to a shortage of residential heating fuel, the automatic regulatory relief lasts for a period of 30 days and exempts any motor carrier or driver operating a CMV to provide residential heating fuel in the geographic area so designated as under a state of emergency from all regulations in parts 390 through 399. Consistent with the statute, the

initial automatic exemption may be extended two times by the Governor, for a total of 90 days, if the Governor determines that the emergency shortage has not ended.

Third, for local emergencies, the automatic regulatory relief would be limited to the HOS regulations in §§ 395.3 and 395.5. This regulatory relief was already limited to 5 days, thus no change to the length of the automatic relief is needed. As with the changes proposed for regional declarations, this change would ensure that any impact on safety continues to be minimized during the period of the automatic regulatory relief.

Finally, this NPRM proposes to revise § 390.25 to simplify the language allowing FMCSA to extend and modify the regulatory relief outlined in § 390.23. It would also require that requests for extensions or modifications to exemptions be made via email. The proposal would maintain the provision allowing FMCSA to establish a new time limit and place any restrictions upon the emergency relief and proposes specifically naming reporting requirements as one of the restrictions FMCSA may choose to include. FMCSA will request approval from the Office of Information and Regulatory Affairs (OIRA) in OMB for a collection of information as part of this rulemaking process.

C. Costs and Benefits

The Agency does not expect this proposed rule to result in substantive incremental impacts relative to the baseline established in the FMCSRs. Most of the changes proposed in this rule have already been in practice through modifications to existing exemptions, including those related to the Coronavirus Disease 2019 (COVID-19) emergency. FMCSA presents a qualitative analysis of the potential costs and benefits of limiting emergency exemptions, as there is uncertainty surrounding the number of motor carriers and drivers who currently utilize exemptions beyond HOS waivers.

In limiting the exemptions to the HOS regulations in §§ 395.3 and 395.5, as opposed to all of 49 CFR parts 390 through 399, this change may result in costs to certain motor carriers and drivers using those additional exemptions. However, as most

emergency exemptions are limited to HOS requirements, including the current COVID-19 emergency exemption, the Agency believes this change would not result in incremental costs relative to the baseline.

Because automatic regulatory relief would decrease from 30 to 5 days for some non-Presidential declarations of emergencies, the proposed rule may result in an increase in the number of extension requests from motor carriers and drivers. An increase in the number of extension requests would increase the burden on drivers and motor carriers to prepare and submit extension requests, as well as the burden on the Agency to review and respond to them. FMCSA presents a quantitative analysis of the impacts of the proposed requirement for individuals to request extensions or modifications to exemptions via email.

While the existing FMCSRs offer relief from safety regulations in parts 390 through 399, FMCSA believes that most exemptions used during emergencies have been related to relief from the HOS requirement. The Agency has no information that suggests that existing emergency exemptions have negatively impacted road safety. This rule would provide clarity on which exemptions are necessary during an emergency and would ensure the public continues to benefit from the other important safety requirements in parts 390 through 399.

III. Abbreviations

ANPRM	Advance Notice of Proposed Rulemaking
CBI	Confidential Business Information
CE	Categorical Exclusion
CFR	Code of Federal Regulations
CMV	Commercial Motor Vehicle
COVID-19	Coronavirus Disease 19
DOT	Department of Transportation
E.O.	Executive Order
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FR	Federal Register
HOS	Hours of Service
NPRM	Notice of Proposed Rulemaking

OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
PTA	Privacy Threshold Assessment
SBA	The Small Business Administration
The Secretary	The Secretary of Transportation
UMRA	The Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

IV. Legal Basis for the Rulemaking

Under 49 U.S.C. 31136(a)(1), DOT is required to adopt regulations to ensure that “commercial motor vehicles are maintained, equipped, loaded, and operated safely,” but in accordance with 31136(e) may “grant in accordance with section 31315 waivers and exemptions from, or conduct pilot programs with respect to, any regulations prescribed under this section.” Section 31315(a) of 49 U.S.C. provides that the Secretary may grant waivers or exemptions from compliance in whole or in part with a regulation issued under section 31136 in certain situations. Section 31502(e) of 49 U.S.C. provides that certain regulations issued under 49 U.S.C. 31502 or 31136 shall not apply to the driver of a utility service vehicle during an emergency period, as declared by an elected official of one or more State or local governments having jurisdiction.

Title 49 U.S.C. 31136 note requires that the Secretary issue the regulations found within this document as proposed 49 CFR 390.23(a)(1)(ii)(B).

Finally, 49 U.S.C. 31133 provides that the Secretary of Transportation may perform other acts the Secretary considers appropriate. These responsibilities and authorities have been delegated by the Secretary to FMCSA. (49 U.S.C. 113 and 49 CFR 1.87)

V. Background

For nearly 30 years, FMCSA has cited 49 CFR 390.23 “Relief from regulations” to provide automatic relief to motor carriers from various regulations. These relief provisions originated with the July 30, 1992, *Federal Register* publication of a final rule (57 FR 33638, 1992 final rule) by the Federal Highway Administration (FHWA), which

amended the regulations to exempt motor carriers and drivers from certain parts of the regulations when directly responding to emergencies. This specific rulemaking constituted the FHWA's final action on three proposed rulemakings, two of which were to exempt motor carriers and drivers from most of the regulations when responding to regional disasters or local emergency situations, and the third proposed rule was for certain relief from the HOS regulations for tow truck operations and tow truck drivers. As one other part of this final rule, the FHWA also made certain technical amendments to the 49 CFR part 395 HOS regulations with an effective date of August 31, 1992 (July 30, 1992, 57 FR 33638).

FHWA undertook this rulemaking to address emergencies created by regional disasters. The 1992 final rule exempts motor carriers and drivers operating in interstate commerce from the requirements of parts 390 through 399 of the regulations when providing direct assistance as part of a disaster relief effort. To accomplish this, the rule provided that the exemption would be utilized only when a disaster had occurred and the President of the United States, a Governor of a State, or his or her authorized representative had publicly declared that assistance was needed to supplement State and local efforts to save lives and property, to protect public health and safety, or otherwise to lessen the impact of a disaster in any part of the U.S. The exemption would last the length of the emergency or 30 days from the time of the initial declaration, whichever was less, except that a motor carrier could apply for, and the Agency could approve, an extension of time prior to the expiration of the relief exemption. The Agency believed that the rule's definitions of *direct assistance*; *emergency*; and *emergency relief* covered most disasters. Those definitions remain basically unchanged since their initial establishment in § 390.5 of the regulations, as finalized in the 1992 final rule.

After a disaster has been declared, the exemption may be used by all motor carriers providing direct assistance to the disaster relief effort. The authorized individual

declaring the disaster need not specify individual motor carriers allowed to use the exemption; rather, an individual motor carrier will decide if it wishes to participate in the relief effort and operate under the exemption. The final rule established the 30-day relief period, however, the time period lasts only as long as there is direct assistance being provided to the emergency relief effort, not to exceed 30 calendar days, unless extended by the Agency.

In the 1992 final rule, FHWA included a provision in the rule to deal with local emergencies by exempting motor carriers and drivers from parts 390 through 399 after a Federal, State, or local government official having authority to declare public emergencies has made such a declaration. Any motor carrier or driver providing direct assistance once a declaration of an emergency has been made by a government official may utilize this exemption. The exemption is effective for the motor carrier and/or driver as long as they are providing direct assistance to the emergency relief effort, but for no longer than 5 calendar days including the initial day of the emergency.

FHWA included a provision allowing for extension of the relief from regulations in § 390.25. This section provides that the Agency may extend the 30-day time period of the exemption contained in § 390.23(a)(1) (regional emergencies), but not the 5-day time period contained in § 390.23(a)(2) (local emergencies) or the 24-hour period contained in § 390.23(a)(3) (dealing with tow trucks). Any motor carrier or driver seeking to extend the 30-day limit shall obtain approval from the Agency in the region in which the motor carrier's principal place of business is located before the expiration of the 30-day period. The motor carrier or driver shall give full details of the additional relief requested. The Agency shall determine if such relief is necessary, taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. If the Agency approves an extension of the exemption, it shall establish a new time limit and place on the motor carrier or driver any other restrictions deemed

necessary. In the 1992 final rule, FHWA stated that it did not believe that motor carriers and drivers should be allowed an extension of a local emergency or tow truck exemption in the absence of a declared regional emergency.

In the 1992 final rule, FHWA argued that emergencies are events that require immediate action to protect human life and the public welfare, and that the final rule removed regulatory requirements that could slow emergency response efforts by drivers and motor carriers. There have been technical amendments to §§ 390.23 and 390.25 published since the 1992 final rule, including revisions to reflect the transfer of authority for the regulations from FHWA to FMCSA; however, these amendments did not substantively amend either section.

On March 13, 2020, the President issued an emergency declaration in light of the COVID-19 pandemic. On the same date, FMCSA issued a regional declaration of emergency. Both declarations automatically triggered relief from all regulations in 49 CFR parts 390 through 399 for a period of 30 days in accordance with § 390.23(a). FMCSA has continually extended the emergency declaration since then in accordance with § 390.25(a). In its extensions of the COVID-19 emergency declaration,³ FMCSA modified the emergency relief granted by the emergency exemption as the circumstances of the emergency changed, eventually limiting the relief provided by the emergency exemption to the HOS rules in §§ 395.3 and 395.5, relying upon the authority in § 390.25 to restrict blanket exemptions from parts 390 through 399. The unprecedented time-period and geographical breadth of that emergency exemption brought into focus the need to ensure that the regulatory relief granted under emergency exemptions is appropriate and tailored to the specific circumstances being addressed.

³ The emergency declaration is available online at <https://www.fmcsa.dot.gov/emergency-declarations>.

Some Agency stakeholders have raised concerns in this regard. In October 2020, for example, the Commercial Vehicle Safety Alliance submitted a petition for a rulemaking asking FMCSA to revise §§ 390.23 and 390.25, and noting the potential safety risks posed by the blanket exemption provision:

For example, while it may be appropriate that during an emergency, all, or portions of, the hours-of-service regulations be waived to expedite the delivery of emergency supplies, there are many other critical safety components and driver requirements that are necessary to safely operate a commercial motor vehicle. Waiving Part 392, for example, which contains drug and alcohol requirements, as well as safe driving practices for a commercial motor vehicle, does nothing to expedite the delivery of emergency products or services, but may have a serious negative impact on highway safety.

Letter dated October 7, 2020, from Collin Mooney, Executive Director, CVSA, to Wiley Deck, then FMCSA Deputy Administrator. (A copy of the CVSA letter has been added to the docket (FMCSA-2022-0028).) The Agency has met with other groups in the past 18 months that have expressed similar concerns. Additionally, the Agency recently requested comment on the extent to which motor carriers are continuing to rely on the COVID-19 emergency declaration to deliver certain commodities and whether there has been any impact on safety (Sept. 7, 2022, 87 FR 54630), and received over three hundred comments.⁴

FMCSA agrees that blanket relief from all the FMCSRs in all emergencies is not appropriate and that motor carriers and drivers of CMVs generally need relief only from the HOS regulations found in §§ 395.3 and 395.5 in order to provide direct assistance to emergency relief efforts. FMCSA initiated this rulemaking to ensure that any impact on safety would continue to be minimized during the period of the automatic regulatory relief.

VI. Discussion of Proposed Rulemaking

⁴ The Agency is currently reviewing those comments and determining its next steps with regard to the COVID-19 emergency declaration.

As noted above, FMCSA believes that the automatic emergency regulatory relief authorized by § 390.23 is unnecessarily broad for the intended purpose, as the primary, immediate constraint that drivers and carriers face when providing direct assistance during an emergency is the HOS limits.

FMCSA proposes to revise, remove, and add definitions to reflect changes made to the emergency exemption rules. These changes include removing an obsolete term, moving the definition of one term to the definition section, and revising two definitions (as discussed below in the “section-by-section” portion of this NPRM).

FMCSA also proposes to shorten the duration and limit the scope of the initial, automatic regulatory relief triggered by an emergency declaration in certain situations. The scope of relief would be limited to specific provisions of the HOS regulations unless the emergency declaration is made by the President under the authority of 42 U.S.C. 5191(b). The relief would also be limited to a period of 5 days unless the emergency declaration is made by the President under the authority of 42 U.S.C. 5191(b). Presidential declarations will continue to trigger a 30-day exemption from all FMCSRs in parts 390 through 399.

Any party, including a State or local official, who believes an extension of the HOS relief or broader regulatory relief is necessary, would be required to request relief and/or an extension from FMCSA. The Agency would evaluate any such request and could approve, modify, or deny the request, as appropriate. FMCSA would also have independent authority to extend or modify the emergency relief. No formal request or form would be required to request relief. Requests would be submitted to FMCSA’s emergency declaration email inbox (FMCSAdeclaration@dot.gov).

More sharply focused regulatory relief will continue to authorize emergency transportation in the public interest while allowing the Agency to better tailor regulatory relief to specific needs in emergencies. It will also avoid automatic suspension of the rest

of the FMCSRs in 49 CFR parts 390 through 399, which pose no serious obstacles to drivers and carriers providing direct assistance to emergency relief efforts but could encourage an unwelcome indifference to compliance with safety regulations.

Beginning with the extension effective in September 2021, FMCSA included a reporting requirement as part of the COVID-19 emergency exemption, requiring motor carriers or drivers to inform FMCSA on how often they relied upon the emergency relief from the HOS regulations in the previous month. This data is used to determine whether the emergency regulatory relief should continue to be extended.

The usefulness of this data prompted FMCSA to propose adding language to § 390.25 to expressly note that one of the conditions FMCSA may include when extending an emergency exemption is to collect information from those carriers and drivers relying upon the regulatory relief. Information on the burden of such a collection of information may be found later in this NPRM.

VIII. Section-By-Section Analysis

This section-by-section analysis describes the proposed changes in numerical order.

49 CFR 390.5/49 CFR 390.5T

This NPRM proposes changes to the definitions found in §§ 390.5 and 390.5T. The definition for *emergency relief* would be removed, as this term would no longer appear in § 390.23 or § 390.25. FMCSA would add a definition for *residential heating fuel*, which currently appears in § 390.23. It would be moved to the definitions section, § 390.5, to make proposed § 390.23 easier to read, and to ensure all definitions appear in one section. The definition would also be modified to include additional common shipping names for petroleum, Liquefied Petroleum Gas or Petroleum Gas Liquefied.

The definition for *direct assistance* would be revised to incorporate the definition of *emergency relief*. In turn, the separate definition of *emergency relief* would be deleted.

The definition of *emergency* would be revised to clarify what does and does not qualify as an emergency that could trigger the automatic exemptions of § 390.23.

49 CFR 390.23

This NPRM proposes several revisions to § 390.23. Paragraph (a) would be clarified to include only those Presidential declarations of emergency issued under 42 U.S.C. 5191(b). These declarations would continue to trigger automatic regulatory relief from parts 390 through 399 for the duration of the emergency, or 30 days from the declaration, whichever is less. This change is being made to ensure that the broader relief triggered by a Presidential declaration of emergency is limited to those situations where a President “determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority.” In addition, this change clarifies the relevant time periods for emergency regulatory relief and eliminates overlapping and potentially conflicting periods where a Presidential disaster or emergency declaration is issued in response to a request from a State when the State has already declared an emergency resulting in relief from certain Federal motor carrier safety regulations. Paragraph (b) of § 390.23 would be used for the emergency declaration scenarios laid out in 42 U.S.C. 5191(a) and (c), where the Presidential declaration is based on an underlying State or Indian Tribal request.

Paragraph (c) would cover local emergencies, whether declared by a Federal, State, or local government official with authority to declare an emergency. The automatic regulatory relief in this case would be limited to a period of 5 days or for the period of assistance (whichever is less) and provide relief only from the HOS requirements in §§ 395.3 and 395.5.

Paragraph (d) of proposed § 390.23 carries forward the special provision for tow trucks from existing paragraph (a)(3). The emergency regulatory relief provided in this paragraph applies only to the HOS regulations in § 395.3 and lasts for no more than 24 hours. No substantive changes are proposed.

Paragraph (e) would carry forward the provisions in existing paragraph (b), outlining the details of when direct assistance to an emergency effort terminates, and the impact of that termination on the terms of the emergency regulatory relief. Changes to this paragraph are made only to clarify the rule; no substantive changes are proposed.

49 CFR 390.25

FMCSA is proposing to change the section heading to indicate that the section applies not only to extensions of emergency relief, but also to their modification. The section would be divided into two paragraphs. Proposed paragraph (a) of § 390.25 would provide that FMCSA may extend or modify any of the emergency regulatory relief issued under § 390.23 on its own initiative, or upon request by an interested party who provides a detailed explanation of the need for an extension through the FMCSA emergency declarations email address (FMCSAdeclaration@dot.gov). This would not be a change to the current regulation. Proposed paragraph (b) would carry forward the existing language requiring that the FMCSA official issuing or approving an extension or modification must set a new expiration date for the emergency regulatory relief. It would also continue to allow the FMCSA official to include any other restriction deemed necessary but would be revised to allow FMCSA to include reporting requirements as a restriction.

IX. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. OIRA within OMB determined that this notice of proposed rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has not reviewed it under that order.

As described above, the changes proposed in this NPRM would exempt CMV drivers and motor carriers only from the HOS regulations in §§ 395.3 and 395.5, as opposed to all regulations in 49 CFR parts 390 through 399, following a regional or local declaration of emergency. In addition, when a regional declaration of emergency is triggered, the automatic regulatory relief would apply for only 5 days, as opposed to the current 30-day standard. The proposed rule would retain the existing automatic regulatory relief of 30 days under Presidential and 5 days under local declarations of emergencies.

Baseline for This Analysis

We do not expect this proposed rule to result in substantive incremental impacts relative to the baseline established in the FMCSRs. Most of the changes proposed in this rule have already been in practice through modifications to existing exemptions, including the COVID-19 emergency exemption.

Since the publication of the 1992 final rule, the FMCSRs have provided the option for motor carriers and drivers to be exempt from the requirements in parts 390 through 399 following a declaration of a Presidential, regional, or local emergency. Beginning in 2020, the COVID-19 related emergency exemption has been utilized to aid with supply chain shortages during the pandemic, as well as with distributing medical products for dealing with COVID-19 (such as tests, treatments, and vaccines). The

unprecedented need to continually extend an emergency exemption prompted FMCSA to reevaluate the rule for exemptions issued in response to an emergency declaration.

In September 2021, FMCSA modified the COVID-19 exemption to narrow the issued relief to just the HOS requirements in §§ 395.3 and 395.5. Based on Agency experience and expertise, FMCSA believes the HOS limits are the primary, immediate constraints drivers and carriers face when providing direct assistance during an emergency. As such, any driver currently operating under the COVID-19 exemption is already afforded only HOS-related exemptions and not a broad exemption from all requirements of parts 390 through 399.

Need for the Proposed Rule

The need for practical and effective exemptions has been highlighted since the COVID-19 pandemic of 2020. The NPRM emphasizes the need for ensuring that relief granted by emergency declarations is appropriate and tailored to the specifics of the circumstances and emergency being addressed. FMCSA believes that a blanket relief from all FMCSRs in parts 390 through 399 is not necessary. Most often, motor carriers and drivers of CMVs need relief from only the HOS regulations in §§ 395.3 and 395.5 in order to provide direct assistance to emergency relief efforts.

Uncertainties

FMCSA presents a qualitative analysis of the potential costs and benefits of limiting emergency exemptions to HOS waivers. There is uncertainty surrounding the number of motor carriers and drivers who currently utilize exemptions beyond the HOS regulations in §§ 395.3 and 395.5 because FMCSA has not previously collected data on the use of the exemptions, and therefore cannot quantitatively inform the potential impacts of limiting emergency exemptions. While the Agency did begin collecting data on COVID-19 exemption use in September of 2021, this data is insufficient to quantitatively estimate these impacts. It provides FMCSA with a basis for the number of respondents to

potential data collections on extensions of emergency exemptions, but it does not provide insight into the use of exemptions beyond HOS exemptions. In order to quantify these impacts, the Agency would need historical data on how many motor carriers and drivers operating during emergency declarations use exemptions from the requirements in parts 390 through 399, excluding the HOS regulations in §§ 395.3 and 395.5, as well as data on how many trips drivers make during those periods. Comprehensive and verifiable data in this area are likely unavailable.

Costs

In narrowing the exemptions to the HOS regulations in §§ 395.3 and 395.5, as opposed to all of parts 390 through 399, this proposed rule may result in costs to certain motor carriers and drivers using those additional exemptions. As mentioned above, FMCSA does not have data to indicate how many carriers and drivers are using emergency-related exemptions beyond the HOS exemptions. However, most emergency exemptions are limited to HOS requirements, including the COVID-19 emergency exemption; therefore, the Agency believes this change would not result in incremental costs relative to the baseline.

As discussed in the Paperwork Reduction Act (PRA) section below, FMCSA estimates that there could be 477 monthly respondents if the Agency adds a reporting requirement to an extension or modification of an exemption. This estimate is based on the average number of responses the Agency received from the COVID-19 emergency exemption data collection. This would represent an upper-bound estimate for how many motor carriers the Agency expects would be required to report their use of an extension and thus be subject to an information collection. The costs of this proposed rule are associated with the cost of compliance to all parts of 390 through 399 except the HOS regulations in §§ 395.3 and 395.5, whereas the 477 respondents denoted below represent all individuals using extensions of emergency exemptions which include a reporting

requirement. The number of individuals who may incur costs to comply with parts 390 through 399 would be a subset of the individuals using extensions of emergency exemptions. As such, the number of affected entities would likely be fewer than 477 individuals. The Agency does not have a means of inferring how many individuals would be affected by the changes proposed in this rulemaking and, therefore, does not use the estimate of 477 respondents as a basis for a quantitative analysis.

The proposed rule may result in an increase in the number of extension requests from motor carriers and drivers, as exemption periods resulting from non-Presidential emergency declarations would be reduced from 30 to 5 days. This rule would require individuals to request extensions or modifications to exemptions via email whenever they seek such action from FMCSA. These requests are currently made to local FMCSA offices, but they may be made by any means.

A requirement for drivers and motor carriers to submit extension requests would increase the burden on drivers and motor carriers to prepare and submit such requests, as well as the burden on the Agency to review and respond to them. As mentioned in the PRA section below, the Agency estimates that 50 individuals⁵ would submit requests for extensions per year. These extension requests would take 15 minutes to complete and total to 12.5 hours of labor (50 respondents \times 15 minutes). The Agency assumes a motor carrier employee equivalent to General and Operations Managers with a loaded hourly wage of \$83.79 would submit the extension request.⁶ As such, there would be a total annual cost of \$1,047.39 ($\83.79×12.5 hours) to submit extension requests.

⁵ The Agency is estimating 50 requests per year based on the expertise of the FMCSA Crisis Management Center.

⁶ The loaded hourly wage is a product of the median hourly wage of a General and Operations multiplied by the fringe benefits rate of 50 percent and overhead costs of 27 percent. The median hourly wage of a General and Operations Manager is \$47.10. A General Operations Manager falls under Bureau of Labor Statistics [BLS] Occupation Code 11-1021.

The Agency estimates that requests for extensions would take 15 minutes each to review. The requests would be reviewed by a GS-13, step 5 in the Washington, DC area with a loaded hourly wage of \$117.69. The total annual cost to review these extension requests is \$1,471.10 ($\117.69×12.5 hours).⁷

Benefits

While the existing FMCSRs offer relief from safety regulations in parts 390 through 399, FMCSA believes that most exemptions used during emergencies have been related to HOS requirement relief. The Agency has no information that suggests that existing emergency exemptions have negatively impacted road safety. This rule would provide clarity on which exemptions are necessary during an emergency and would ensure the public continues to benefit from the other important safety requirements in parts 390 through 399. In addition, in requiring that individuals request extensions or modifications to exemptions via email, the Agency would be able to more efficiently track exemption requests.

B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801-808), OIRA designated this rule as not a *major rule*.⁸

C. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or proceed with a negotiated rulemaking, if a proposed

⁷ The hourly wage for a GS-13 Step 5 in the Washington, DC region was multiplied by the federal government fringe benefits rate of 45 percent and the federal government overhead rate of 64 percent to arrive at the loaded hourly wage. The hourly wage denoted in the OPM schedule for a GS-15 step 5 is \$56.31. https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/DCB_h.pdf

⁸ A *major rule* means any rule that the OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (49 CFR 389.3).

rule is likely to lead to the promulgation of a major rule. As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,⁹ requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

The proposed rule would affect motor carriers and drivers. Drivers are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, drivers are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA. The Small Business Administration's (SBA) size standard for a small entity (13 CFR 121.201) differs by industry code. The entities affected by this rule fall into many different industry codes. In order to determine if this rule would have an impact on a significant number of small entities, FMCSA examined the 2017 Economic Census data¹⁰ for two different industries; truck transportation (Subsector 484) and transit and ground transportation (Subsector 485).

⁹ Pub. L. 104–121, 110 Stat. 857 (Mar. 29, 1996).

¹⁰ U.S. Census Bureau, *2017 US Economic Census*. Available at: <https://data.census.gov/cedsci/table?q=United%20States&t=Value%20of%20Sales,%20Receipts,%20Revenue,%20or%20Shipments&n=484&tid=ECNSIZE2017.EC1700SIZEREVEST&hidePreview=true> (last accessed Oct. 29, 2021).

According to the 2017 Economic Census, approximately 99.4 percent of truck transportation firms, and approximately 99.2 percent of transit and ground transportation firms, had annual revenue less than the SBA's revenue thresholds of \$30 million and \$16.5 million, respectively, to be defined as a small entity. Therefore, FMCSA has determined that this rule would impact a substantial number of small entities. However, as emergencies are generally infrequent and the primary impact of the rule would be to marginally limit the breadth of the automatic exemptions that apply after a regional or local emergency declaration, FMCSA has determined that this rule would not have a significant impact on the affected entities.

Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,¹¹ FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates

¹¹ Pub. L. 104–121, 110 Stat. 857 (Mar. 29, 1996).

each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$178 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2021 levels) or more in any 1 year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

This NPRM contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), *collection of information* comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

TITLE: Emergency Declaration Exemption Reporting under 49 CFR 390.25

OMB CONTROL NUMBER: [2126-NEW].

SUMMARY OF THE INFORMATION COLLECTION: Proposed 49 CFR 390.25 would allow FMCSA to add a reporting requirement to an extension of an

emergency exemption, requiring motor carriers operating under the extension's terms to report their continued use of and reliance on the exemption. It would also require that individuals request extensions or modifications to exemptions via an email whenever they seek such action from FMCSA.

NEED FOR INFORMATION: The collection of information is necessary for FMCSA to determine the extent to which motor carriers continue to rely upon an extended emergency exemption.

PROPOSED USE OF INFORMATION: FMCSA would use the information collected as one piece of data to determine whether or not to extend or modify emergency exemptions under 49 CFR 390.25.

DESCRIPTION OF THE RESPONDENTS: Motor carriers that operate under the terms of an extended emergency exemption, originally triggered by a declaration of emergency. Individuals who want to request an extension or modification of an emergency exemption.

NUMBER OF RESPONDENTS: 477 per month for reporting requirements; 50 per year for requests for extension or modification of exemptions.

FREQUENCY OF RESPONSE: Monthly for reporting requirements; as necessary for requests for extension or modification of exemptions.

BURDEN OF RESPONSE: 15 minutes per response for reporting requirements and for requests for extension or modification of exemptions.

ESTIMATE OF TOTAL ANNUAL BURDEN: The public burden for this information collection is estimated to average 1,444 hours per year (1,431 for reporting + 13 for requests for extension or modification).

As required by the Paperwork Reduction Act of 1995, FMCSA will submit a copy of this NPRM to OMB for review.

You are asked to comment on any aspect of this information collection, including:

- (1) Whether the proposed collection is necessary for FMCSA to perform its functions;
- (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

The Consolidated Appropriations Act, 2005,¹² requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

¹² Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

The E-Government Act of 2002,¹³ requires Federal agencies to conduct a Privacy Impact Assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA has been submitted to FMCSA's Privacy Officer for review and preliminary adjudication and to DOT's Privacy Officer for review and final adjudication.

J. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6.y(4). The categorical exclusion (CE) in paragraph 6.y(4). covers relief during regional and local emergencies. The proposed requirements in this rule are covered by this CE.

¹³ Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

List of Subjects in 49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FMCSA proposes to amend 49 CFR part 390 as follows:

PART 390 – FEDERAL MOTOR CARRIER SAFETY REGULATIONS;

GENERAL

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as added and transferred by sec. 4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109-59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112-141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113-125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115-105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

2. Amend § 390.5 as follows:

- a. Lift the suspension of the section;
- b. Revise the definitions of “Direct assistance” and “Emergency”;
- c. Remove the definition of “Emergency relief”;
- d. Add, in alphabetical order, a definition of “Residential heating fuel”; and
- e. Suspend the section indefinitely.

The revisions and addition read as follows:

§ 390.5 Definitions.

* * * * *

Direct assistance means transportation operations in which a motor carrier or driver of a commercial motor vehicle (CMV) is supplementing State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section involving transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of

essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

* * * * *

Emergency means any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, ice storm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout, or other occurrence, natural or man-made, which interrupts the delivery of essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the Federal Motor Carrier Safety Administration (FMCSA); or by other Federal, State, or local government officials having authority to declare emergencies; or a request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

Emergency does not include events from economic conditions that are caused by market forces, including price increases, shortages of raw materials or labor strikes, (e.g., driver shortages, other supply chain issues) unless such event causes an immediate threat to human life and results in a declaration of an emergency by the President of the United States; the Governor of a State, or their authorized representatives having authority to declare emergencies; FMCSA; or other Federal, State, or local government officials having authority to declare emergencies.

* * * * *

Residential heating fuel includes heating oil, natural gas, and propane (also known as Liquefied Petroleum Gas or Petroleum Gas Liquified).

* * * * *

3. Amend § 390.5T as follows:

- a. Revise the definitions of “Direct assistance” and “Emergency”;
- b. Remove the definition of “Emergency relief”; and
- c. Add, in alphabetical order, a definition of “Residential heating fuel”.

The revisions and addition read as follows:

§ 390.5T Definitions.

* * * * *

Direct assistance means transportation operations in which a motor carrier or driver of a commercial motor vehicle (CMV) is supplementing State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section involving transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

* * * * *

Emergency means any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, ice storm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout, or other occurrence, natural or man-made, which interrupts the delivery of essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication

transmissions) or essential supplies (e.g., food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the Federal Motor Carrier Safety Administration (FMCSA); or by other Federal, State, or local government officials having authority to declare emergencies; or a request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

Emergency does not include events from economic conditions that are caused by market forces, including shortage of raw materials or labor strikes, (e.g., driver shortages, computer chip shortages, other supply chain issues) unless such event causes an immediate threat to human life and results in a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies.

* * * * *

Residential heating fuel includes heating oil, natural gas, and propane also known as Liquefied Petroleum Gas or Petroleum Gas Liquified.

* * * * *

4. Revise § 390.23 to read as follows:

§ 390.23 Automatic relief from regulations in this chapter.

(a) *Presidential declaration of emergency.* During an emergency declared by the President of the United States pursuant to 42 U.S.C. 5191(b) or for 30 days from the date of the initial declaration of the emergency, whichever is less, parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial motor vehicle, so long as the motor carrier or driver is providing direct assistance.

(b) *Regional declarations of emergency.* Except as provided in paragraph (b)(1) of this section, §§ 395.3 and 395.5 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by the Governor of a State, their authorized representative, or FMCSA during the emergency period or 5 days from the date of the initial declaration of emergency, whichever is less.

(1) *Residential heating fuel shortages.* Parts 390 through 399 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle to provide residential heating fuel in the geographic area designated in an emergency declaration issued by the Governor of a State. If the Governor of a State declares an emergency caused by a shortage of residential heating fuel and, at the conclusion of the 30-day period immediately following the declaration, determines that the emergency shortage has not ended, and extends the declaration of an emergency for up to two additional 30-day periods, this regulatory relief shall remain in effect up to the end of such additional periods. The total length of the emergency shall not exceed 90 days.

(2) [Reserved]

(c) *Local emergencies.* Sections 395.3 and 395.5 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by a Federal, State, or local government official having authority to declare an emergency for the period of such assistance or 5 days from the date of the initial declaration of emergency, whichever is less.

(d) *Tow trucks responding to emergencies.* Section 395.3 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency when a request has been made by a Federal, State, or local police officer for tow trucks to move wrecked

or disabled motor vehicles. This regulatory relief shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief or 24 hours from the time of the initial request for assistance by the Federal, State, or local police officer, whichever is less.

(e) *Termination of regulatory relief.* (1) Upon termination of direct assistance to the emergency relief effort, the motor carrier or driver is subject to all previously exempted sections with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with the previously exempted sections. However, a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities.

(2) Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(3) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to an emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until the driver has met the requirements of §§ 395.3(a) and (c) and 395.5(a) of this chapter.

5. Revise § 390.25 to read as follows:

§ 390.25 Extension or modification of relief from regulations in this chapter - emergencies.

(a) FMCSA may extend the period of the regulatory relief or modify the scope of emergency relief contained in § 390.23. Interested parties may also request an extension or modification by providing a detailed explanation of the need for an extension or modification of the relief. Any interested party seeking to extend the period of regulatory relief shall send its request to the FMCSA emergency declarations mailbox, FMCSAdeclaration@dot.gov, before the expiration of the period of relief. FMCSA will determine if such relief is necessary by evaluating the circumstances of the ongoing emergency, the need for relief, and the nature of the relief to be provided.

(b) If FMCSA initiates or approves an extension of the regulatory relief, it shall establish a new time limit and may place terms and conditions on motor carriers or drivers relying upon the continued or modified relief. These terms and conditions may include reporting requirements concerning operations under the exemption.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,
Administrator.